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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,169	05/14/2001	Howard M. Welch	03768/09379	8922

7590

05/09/2003

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EXAMINER

AFTERGUT, JEFF H

ART UNIT

PAPER NUMBER

1733

12

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,169

Applicant(s)

WELCH ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 81/2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4 and 6-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Patent 2248575 in view of PCT WO 92/16366 for the same reasons as expressed in paragraph 2 of paper no. 8.
3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above further taken with any one of Japanese Patent 54-82424, Wirz, or Ditzler for the same reasons as expressed in paper no. 8, paragraph 3.

***Response to Arguments***

4. Applicant's arguments filed 4-8-03 have been fully considered but they are not persuasive.

The applicant takes the position that : (1) there is no reason to combine the teachings of PCT '366 with Canadian Patent '575, and; (2) even if one were to combine the teachings of the references one would not have attained the claimed invention. These arguments are not persuasive for the reasons identified below.

Regarding the lack of a reason to combine the references, the applicant argues that the Canadian Patent '575 was utilizing the rollers 162, 164, 166 and 168 to quench and stretch the elastomeric filaments while the reference to PCT '366 was directed to combining elastomeric filaments with non-elastomeric but stretchable filaments into a tow for later processing. The applicant's analysis is somewhat flawed, however because PCT '366 chills the rollers 86 where the filaments come into the same. likewise, in the embodiments in PCT '366 where the extruder

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was not canted, the rollers 20 were temperature controlled and speed controlled to maintain the tension (presumably cooled). In Figure 1, for example, the fibers of PCT '366 were brought together without canting the extruder relative to the chill roller while in Figure 3 for example the fibers were brought together at the chill roller with canting the extruder. Clearly, one viewing the same would have understood that feeding to chilling rollers from an extruder either directly or in a canted direction would have been an alternative expedient in the art. Additionally, note that feeding to a chilling roller in a canted direction would have resulted in the chilling of the fibers over a greater surface area of contact with the chill roller. In other words, when feeding from a canted extruder, the filaments would have made greater surface contact with the chill roller than feeding from a direct vertical position. Because both PCT '366 and Canadian Patent '575 are concerned with the chilling of the extruded filaments with the chill rollers, one skilled in the art at the time the invention was made would have been expected to feed the extruded filaments to the chill roller at a canted angle in order to better effect the cooling of the extruded filaments. Not only would one skilled in the art have recognized the feeding in a canted direction was an art recognized equivalent to feeding vertically, but the artisan would have been aware of the inherent advantages of feeding in a canted direction (greater contact with the chill roller) and thus would have understood to feed the elastomeric filaments in Canadian Patent '575 in a canted direction.

The applicant argues that the substitution of the extruder in PCT '366 into the Canadian Patent '575 requires the use of both extruders. This is not understood. As expressed above and in paper no. 8, the only modification being made to Canadian Patent '575 was to reorient the extruder for the elastomeric filaments in order to allow for greater contact with the initial chilling

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roller (greater contact would have resulted in better cooling efficiency in the operation). Such was a recognized alternative to feeding the filaments vertically into the chill roller as suggested by PCT '366. additionally, applicant is advised that the claims at hand do not exclude the feeding of both elastic and inelastic but stretchable filaments into the roller arrangement. As such the claims at hand are not commensurate in scope with the applicant's arguments.

The applicant argues that the filaments in Canadian Patent '575 were rectangular in cross section while the filaments in PCT '366 were of a rounded configuration. It should be noted that this is immaterial to the consideration of whether one canted the extruder because: (1) the claims at hand do not recite the shape of the filaments, and; (2) whether one utilized various cross sectional shapes would not have effected whether the filaments were quenched after extrusion because in both instances the filaments were quenched after formation (and thus the feeding to a canted roller would have been within the purview of the ordinary artisan).

Regarding claim 5, the applicant has not argued the specifics of the references cited above but rather has taken the position that because the independent claim is allowable that claim 5 must likewise be allowable. The applicant is advised that claim 1 has not been found to be allowable. Additionally, because applicant did not specifically address the references applied to claim 5, it is believed that applicant agrees with the Office interpretation of the same.

No claims are allowed.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
May 8, 2003